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A  
TRANSLATION  
OF THE  
CHAPTERS  
CCLXXIII. AND CCLXXXVII.  
OF THE  
CONSOLATO DEL MARE,  
RELATING TO  
**Prize Law.**

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NON VIDETUR VIM FACERE, QUI JURE SUO UTITUR  
ET ORDINARIA ACTIONE EXPERITUR.

DIGEST.

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LONDON:  
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FOR J. WHITE, AND FOR J. BUTTERWORTH,  
FLEET-STREET.

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1800.

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TRANSLATION  
OF THE  
CHAPTERS  
CCLXXII. AND CCLXXIII.  
OF THE  
CONVULSIONS OF THE NATION  
RELATING TO  
THE YEAR 1793.



LONDON:  
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1793.

( vi )

ADVERTISEMENT.

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**HAVING**, some time ago, made a translation of those chapters of the *Consolato del Mare*, that relate to the general Law of Prize, the Editor of the following pages has been led to lay them before the public, in their simple form; under a hope that, in these times, when some persons are disposed, from partial views, to arraign the whole system of Prize Law, as an invasion of the rights of commerce; and as if it were altogether a thing of novel, local, or arbitrary institution; it may not be unreasonable to shew what have been the regulations on this subject of that celebrated code, which has been recognized and adopted as the foundation of their sea laws by most of the maritime States of Europe.

The principles detailed in these chapters are few, simple, and moderate, bearing evident

marks of a plain, practical origin ; and are, at this day, as it may be safely affirmed, closely exemplified in the equitable system of Prize Law that is administered in the Courts of Admiralty of this kingdom.

In matters of municipal regulation, those ancient writings that have handed down to us rudely, perhaps, but very serviceably, the main principles from which more perfect systems have arisen, are not less revered, nor less esteemed, in point of authority, because they do not contain all that particularity and fulness, which the more complicated interests of advanced periods of society necessarily introduce. The affairs of nations must, in like manner, grow complex, in some proportion to the complication of interests of those who compose them ; and the reverence due to the rudiments of all laws, whether of a more local or of a more general nature, stands, in respect to every thing connected with their antiquity, on the same footing. If then some topics of considerable importance have grown up by use, beyond what are to be found in these chapters ; they are not necessarily to be considered, as reproaching the scantiness of this compilation, nor as taxing modern practice with a departure



a departure from ancient principles; neither will they divert the studious inquirer from observing, that the system of Prize Law, that has uniformly been administered in the Courts of Admiralty of this kingdom, bears in its chief outlines a marked conformity to the principles of this ancient code.

Of the general merit of the *Consolato*, as a body of practical regulations, adapted to the variety of relations and interests that spring from maritime pursuits, it is impossible to be altogether silent. *Bynkershock* and *Hubner* have termed it a *farrago*, *un amas*, *ou un recueil assez mal-choisi*; forgetting, that reproaches of this nature point more immediately to the manner and form, than to substantial merits; and, that they are not very judicious terms of criticism, to be applied generally to a compilation of Laws, derived out of the daily practice, and experience of neighbouring commercial states, in rude and remote times. Other readers will, perhaps, be more disposed to esteem it a *valuable*, but *hidden treasure*, with the very respectable names of *Casa-Regis*, *Valin*, and *Emerigon*, than to join, with speculative theorists, in terms of disrespect; calling to mind  
the

the words of Mr. *Emerigon*, who says of this work, and of *Hubner's* criticism on it—" *Cet*  
*" auteur, ayant trouvé dans le chapitre 273,*  
*" des décisions contraires à son système, a été*  
*" de mauvaise humeur, contre l'ouvrage entier ;*  
*" mais si l'eût examiné avec quelque soin, il se*  
*" seroit convaincu, que les décisions, que le con-*  
*" sulat renferme, sont fondées sur le droit de*  
*" gens. Voilà pourquoi elles réunirent les suf-*  
*" frages des nations ; elles ont fourni une am-*  
*" ple matière, aux Rédacteurs de l'ordonnance*  
*" de 1681 ; et malgré l'écorce gothique que*  
*" les enveloppe quelquefois on y admire l'esprit*  
*" de justice, et d'équité que les a dictées."*

The edition, from which this translation was made, is the old Italian translation, chiefly used by *Casa Regis*, and reprinted with his *explanations*, at *Venice*, in 1737. To those who know the original, it is needless to observe, that a translation, on any plan of close verbal accuracy, would scarcely be intelligible. The only fidelity to which a translator of such a work can pledge himself, is to a just and cautious interpretation of the sense and meaning, as far as it can be attained. Subdivisions of the chapters have been introduced, according to what appeared to be the natural

tural distinctions of the subject ; the original being entirely without divisions, and scarcely pointed, except in such a manner, as to mislead, rather than assist the reader, in many instances. In consulting the *Consolato*, considerable assistance may be derived, as to the general sense, from the short *explications* annexed to it by Mr. *Casa Regis*. He himself professes to have received great light from the old *French* translation printed first at *Marseilles*, in 1577, and reprinted at *Aix*, in 1635. It is impossible to dismiss this subject without regretting that a new translation of this work, with notes and observations, by Mr. *Emerigon*, in which, according to *Valin*, that gentleman was once employed, has never appeared.

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With respect to the antiquity of the *Consolato*, the Reader is referred to the table prefixed to the *Italian* editions, in which it is specifically asserted to have been received at *Rome* in the year 1075 ; and at various places, at various periods, through the 11th, 12th, and 13th centuries. But let him consult also, *Giannoni's Ist. di Napoli*, lib. xi. chap. 6, in which, according to some opinions, this compilation is supposed not to have been made till the time of *Louis IX.* of *France*, towards the middle of the 13th century. It is, however, generally allowed to have been composed from the *Amalphitan* Table ; and as that is supposed to have existed as a body of Sea Laws, of great and extensive authority in the *Mediterranean*, from the close of the 11th century, there may perhaps be no great variation in the substance of these two accounts.

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 the short explanations annexed to it by Mr. Cole  
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 great light from the old French translation  
 printed but at Antwerp in 1569, and re-  
 printed at Paris in 1699. It is impossible to  
 change it, but without retaining that a  
 new translation of the work will now and  
 occasionally by Mr. Keble, in which, as  
 compared to the old French version, the  
 subject has been improved.

## CHAPTER CCLXXIII.

### *Of Merchant Vessels captured by an armed Ship.*

#### SECTION I.

**I**F an armed ship, or cruizer, meets with a merchant vessel belonging to an enemy, and carrying a cargo the property of an enemy, common sense will sufficiently point out what is to be done; it is therefore unnecessary to lay down any rules for such a case.

Ship and cargo being both enemy's property.

2. If the captured vessel is neutral property, and the cargo the property of enemies, the captor may compel the merchant vessel to carry the enemy's cargo to a place of safety, where the prize may be secure from all danger of recapture, paying to the vessel the whole freight, which

Of a neutral vessel; the cargo being enemy's property.



Chap. 273 she would have earned at her delivering port ; and this freight shall be ascertained by the ship's papers, or in default of necessary documents, the oath of the master shall be received as to the amount of the freight.

Respecting  
the carry-  
ing on of  
the prize  
cargo by  
the neutral  
vessel.

3. Moreover, if the captor is in a place of safety, where he may be secure of his prize, yet is desirous to have the cargo carried to some other port, the neutral vessel is bound to carry it thither ; but for this service, there ought to be a compensation agreed upon between them ; or, in default of any special agreement, the merchant vessel shall receive for that service the ordinary freight that any other vessel would have earned for such a voyage, *or even more* ; and this is to be understood of a ship that has arrived in the place where the captor may secure his prize ; that is to say, in the port of a friend ; and going on an ulterior voyage to that port, to which the captor wishes her to carry the cargo which he has taken.

If

4. If it shall happen that the master of the captured vessel, or any of the crew, shall claim any part of the cargo as their own, they ought not to be believed on their simple word; but the ship's papers or invoice shall be inspected; and in defect of such papers, the master and his mariners shall be put to their oaths; and if, on their oaths, they claim the property as their own, the captor shall restore it to them; regard being paid, at the same time, to the credit of those who swear, and make the claim.

Chap. 273  
Claims by  
the master  
or crew.

5. If the master of the captured vessel shall refuse to carry the cargo, being enemy's property, to some such place of safety, at the command of the captor, the captor may sink the vessel, if he thinks fit, without controul from any power or authority whatever, taking care to preserve the lives of those who are in her. This must be understood however, of a case where the whole cargo, or at least the greater part, is enemy's property.

If the neu-  
tral ship  
refuses to  
carry the  
cargo, &c.

If

Chap. 273

Of an ene-  
my's ship  
with a  
neutral  
cargo.

6. If the ship should belong to the enemy, the cargo being either in the whole, or in part, neutral property; some reasonable agreement should be entered into, on account of the ship now become lawful prize, between the captor and the merchants owning the cargo,

Neutral  
merchants  
refusing to  
enter into  
agreement  
about the  
cargoes, &c

7. If the merchants refuse to enter into such an agreement, the captor may send the vessel home to the country whose commission he bears; and in that case the merchants shall pay the freight, which they were to have paid at the delivering port; and if any damage is occasioned by this proceeding, the captor is not bound to make compensation; because the merchants had refused to treat respecting the ship, after it had become lawful prize; and for this farther reason also, that the ship is frequently of more value than the cargo she carries.

Captor re-  
refusing to  
enter into  
agreement  
&c.

8. If, on the other hand, the merchants are willing to come to a reasonable agreement,

ment, and the captor, from arrogance, or Chap. 273 other wrong motives, refuses to agree, and forcibly sends the cargo away, the merchants are not bound to pay the whole, nor any part of the freight; and besides, the captor shall make compensation for any damage he may occasion to them.

9. If the capture should be made in a place where the merchants have it not in their power to make good their agreement, but are nevertheless men of repute, and worthy to be trusted, the captor shall not send away the vessel without being liable to the damage; but if the merchants are not men of known credit, and cannot make good their stipulated payment, he may then act as it is above directed.

## CHAPTER

## CHAPTER CCLXXXVII.

### *Of Cases of Recapture.*

#### SECTION I.

**Ships re-  
captured  
before  
they have  
been taken  
into a place  
of security.**

**IF** a ship is taken by the enemy, and afterwards another ship of a friend comes up, and effects a recapture; the vessel, and all that is in her, shall be restored to the former proprietors, on payment of a reasonable salvage for the expence, and trouble, and danger that have been incurred; but this is to be understood of recaptures effected within the seigniory, or territorial seas of the country, to which the captured vessel belongs, or before the enemy had secured the vessel to himself, in a place of safety.

**If**



2. If the recapture has been effected Chap. 287  
 within the enemy's territories, or in a place <sup>Ships re-</sup>  
 where the enemy was in entire possession <sup>captured</sup>  
 of his prize, that is, in a place of se- <sup>in the ene-</sup>  
 curity, the proprietors shall not recover, <sup>my's terri-</sup>  
 nor shall the recaptors claim any salvage; <sup>tory; or</sup>  
 for they are entitled to the whole benefit <sup>being in</sup>  
 of the recapture, without opposition, from <sup>a place of</sup>  
 any rights of seigniory, or the claims of <sup>security.</sup>  
 any person whatever.

3. If an enemy, having made a capture Ship de-  
 of a vessel, quits his prize on appearance <sup>ferted by</sup>  
 of another vessel, either from fear, or from <sup>the ene-</sup>  
 any doubt that he may entertain of her; <sup>my, and</sup>  
 and the vessel, on whose account the cap- <sup>through</sup>  
 tured ship was abandoned, takes possession <sup>fear of a</sup>  
 of the vessel that has been relinquished, and <sup>friend ap-</sup>  
 brings her into port; she shall be restored <sup>pearing in</sup>  
 to the proprietor, or his heirs, without <sup>fight.</sup>  
 opposition, on payment of a reasonable  
 salvage, to be fixed, by agreement between  
 the parties, or if the parties cannot agree,  
 by the arbitration of creditable persons.

If

Chap. 287

Ship de-  
serted by  
the owner,  
through  
fear of an  
enemy, but  
not taken  
into the  
possession  
of the ene-  
my.

4. If it should happen that any one abandons his vessel through fear of his enemy; and any friendly vessel falls in with the ship that has been deserted, and brings her into a place of security; that is to say, in a case where the finding vessel has not retaken the ship from the enemy, and where the enemy had not carried her into a place of security, and had not taken her from the owner; the finders shall have no claim to the vessel, nor to the cargo on board; but, by the use and custom of the sea, they may demand a reasonable salvage, to be settled, either by agreement, or by reference to the arbitration of creditable persons; for it is not fit that any one should endeavour to take undue advantage of the misfortunes of another; since he cannot foresee what may happen to himself; and because, every one should be ready to submit his disputes, especially in cases like the present, to the arbitration of two unexceptionable persons.

It

5. It is besides to be understood, in all that has been said, that every thing shall be done without fraud; for no man can tell what may be his own case; and it sometimes happens that the deceit and injury which a person attempts to practise on others, light upon himself: therefore, if any persons, knowing that a ship is going on a voyage, where she must be exposed to danger or alarm from the enemy, fit out a vessel with a view, and for the purpose of doing injury to that ship or any other, in making salvage at their expence; or with a design of getting possession of the ship and cargo: if it can be proved against them, that they went out with any such intention, such persons shall not be entitled to any salvage on the ship or cargo, although the owner may have abandoned her; nor even, although she may have been taken by the enemy.

Chap 287  
Cases of  
fraud.

6. If those, who fitted out the vessel, cannot establish, in proof, that they did not arm with any of the before-mentioned intentions;

Farther regulations  
respecting  
fraud.

Chap. 287 tentions ; or if it should be proved against them, that they armed for the purpose of doing injury to any one, or generally to all, whom they might meet, in the form and manner of enemies ; in such a case, whether they bring in a vessel, with or without a cargo—whether it shall be retaken from the enemy, or merely found by them, they shall take no benefit from it, but the whole shall be restored to the former proprietors ; and moreover such persons, so arming, shall be delivered over to justice to be treated as robbers and pirates, if the fact can be established in proof.

Continued 7. If they are not convicted of such an intention, having either retaken or found a vessel in any of the situations above-mentioned, they shall be entitled to their full right and benefit, according to the preceding regulations. But if the matter shall remain in doubt, or if it shall rest with them to disprove the charge, neither they, nor any that were with them, nor any, that are interested in the event, shall



shall be received to give evidence in <sup>Chap. 287</sup> their favour; nor shall any person of a covetous disposition, nor any one, who may be suspected of being biased by money, be a witness for them.

8. If an enemy shall have made a capture of a vessel or cargo, and shall afterwards abandon it, voluntarily, and not from any fear or apprehension of any vessel coming upon him; and if any persons shall find the vessel or cargo that has been voluntarily abandoned, and bring it to a place of security, the property shall not be acquired to them, if any owner can be found; but they shall receive a reasonable salvage, to be fixed, at the discretion of reputable persons of the place, to which the ship or goods shall be carried.

9. If, after the expiration of a reasonable time, no owner comes forward, the finders shall receive for their salvage one half of the proceeds, and the other half shall be applied in the man-

Ships, voluntarily deserted by the enemy.

No owner appears



Chap. 287 ner that has been expressed and declared in a preceding chapter<sup>a</sup>.

Abandonment by the enemy, in distress, &c.

10. If the enemy, being in possession of any ship or cargo, shall not have deserted it voluntarily, but shall have been obliged to abandon it by storm or tempest, or on account of any ship or vessel by whom he may have been alarmed, the same rule shall be observed as if the enemy had quitted the same voluntarily, and of his own accord.

Captured property ransomed.

11. If the enemy, after a capture, comes to any place where he takes a ransom for his prize, if the proprietors wish to have

<sup>a</sup> In chapter 249, the same proportion of a moiety is given to the finder of goods found floating in port, &c. after the expiration of a year and a day, if no owner appears to claim. The other moiety was to be divided into two parts, of which the Lord of the Jurisdiction was to retain one; and to apply the other to *pious purposes*, for the soul of the proprietor—" *All hora la giustizia debba dare a quello ché trovata l'haverà, la metà per suo beveraggio, et della metà che rimanerà, debba fare la giustizia due parti; et può pigliarne lui una parte, et l'altra che rimane, debbela dare per amor di Dio, dove a lui piace, per l'anima di quello, di chi sarà stata.*

their

their vessel or cargo again, he or they, <sup>Chap. 287</sup> who have ransomed her, are bound to deliver her up to the original owners, on payment of the debt and charges, and some further allowance besides, if they choose to accept it.

12. If an enemy, on capture of a ship or cargo, shall make a gift of it; such a donation or gift shall not be valid on any account; except that if a gift is made of the ship or cargo, to those to whom it belonged, such donation shall be valid. But if the captor bargains with the master in these words, "We are willing to give you your ship for nothing, but must have a ransom for the cargo," such a donation shall not be good; because, in the case of which we are now speaking, the enemy had not carried it to a place of security, so as to say, that he might not lose it; notwithstanding that he might so far have obtained power over his prize, as to be able to burn or sink it; though, in such case, it would be totally lost both to him and to the

A gift of  
captured  
property;  
when valid

Chap. 287 the owner; it is to be understood therefore that if the cargo is ransomed, the master to whom his ship has been so given, is bound to contribute to the ransom paid for the cargo according to the value of the ship; and the same rule shall be observed, *e contra* also, and applied equally to the ransom of ship or cargo.

Gift, or  
sale of a  
vessel, in a  
place of se-  
curity.

13. If the captor shall have taken the prize to a place of security; that is, if it shall have been carried out of the seas of the enemy, where a recapture might be effected; if when the captor shall have it in safe possession, and in his own power, he shall make a donation, or sale of the ship or cargo, such a donation or sale shall be valid, without exception, from any quarter; unless he, to whom the donation was made, should have accepted it with an intention of doing a kindness to the owner, and for his benefit; in that case, he may restore it if he pleases; but otherwise, he is not compellable by any person, nor on any account.

If,

14. If, however, he, to whom the property belonged, can shew that there has been any *fraud* in the business, the donation shall not, on any account, avail; but he, to whom it was made, ought to be seized by the lord of the country, and punished in goods, and in person, according to the circumstances of the case; and the ship or cargo shall be restored to the former owner.

Chap. 29.  
Cases of  
fraud ex-  
cepted.

15. If the ship or cargo shall have been *sold* by the enemy to any one, the sale shall be valid, provided that he, who has purchased, can shew that the sale was made to him by the enemy in a place of security, that is, where the enemy held the goods in question, *in suo dominio*; and in case any one, who pretends to have acquired the ship or cargo by a just title, cannot prove the asserted sale, it shall not be valid; and if the former owner appears, and can make proof of his property, it shall be restored to him. The evidence of these disputed claims shall be discussed before two reputable persons of the country where the dispute

Sale in a  
place of  
security;  
proof of  
sale.



**Chap. 287** dispute arises, and without fraud; and if any fraud is discovered, the party against, whom the fraud is proved, shall be bound to pay to the other party, costs, damages, and interest; and besides, the party consenting to the fraud shall be delivered over to the justice of the country.

Property recovered by the master, restored.

16. If the master, or person acting for him, recovers the ship or cargo by any means, he is bound to make restitution to the proprietors, according to their several proportions, on payment of the expences *pro rata*.

Redemption by the master, with the consent of the proprietors, or the major part.

17. If the master shall redeem any part of the cargo, or make any agreement *with the consent* of the major part of his co-partners, by which he shall regain the ship or cargo, he may compel them to contribute, by course of justice, because they are as much under an obligation to him, as if they had agreed to take part in building or purchasing a new ship,

But



18. But if the master makes any agreement, *without the consent* of his partners, or the major part of them, they are not bound to any thing, unless they like it; nor is the master answerable to them for the rights and interests which they had in the ship at the time of capture; saving for any previous accounts which might be still remaining unsettled, respecting their shares in the ship or cargo at the time it was taken by the enemy.

Chap. 287

Without  
their con-  
sent.

19. If the original proprietors are disposed to resume their shares, and the master makes any opposition, the justice of the country may compel him to acquiesce; for there can be no ground of reasonable resistance on his part, if they are willing to pay their proportion of the expence; and it would be manifestly unjust that any one should dispossess the rest of their property.

Refump-  
tion by the  
owners.

20. But if the master, or any one for him, redeems his ship or cargo, after the enemy has gained a just title in it, and

In case of  
their refusal.

D

those

Chap. 287

those who were part owners refuse to pay, as before specified, the master, or his agent, ought to repeat his demand upon them several times, and call upon them to pay their share; and if they still refuse, it shall be put up to auction, with permission of the government, and be disposed of to the best bidder.

Case of  
surplus af-  
ter refusal.

21. If the ship or cargo shall be sold for more, after such refusal, than the ransom paid, the surplus shall be paid to the owners, according to their shares, if the master chooses it; otherwise, he is not obliged; And the master shall have the privilege of retaining the goods in question at the price that others are willing to give for them.

Case of  
deficiency.

22. If the sale shall not produce *so much* as the ransom; if the master made the ransom without the consent of his partners, they are not bound for the deficiency, unless they choose it; and therefore it is reasonable that the master, or his agent, should have the privilege of retaining, at the price

price that any other person would give, Chap. 287  
as the deficiency would fall upon him ;  
saying, however, that if any of the partners  
are inclined to resume their shares, they are  
bound to make good the deficiency to him  
*pro rata*. All the reasonings and cases  
and conditions above-mentioned, shall be  
taken under the supposition that the ene-  
my had carried the prize into a place  
of security ; and that the ransom or sale  
had been made fairly and without fraud.

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#### POSTSCRIPT.

It may not be improper to add, as an obser-  
vation pointing out the chasm between the re-  
gulations of this ancient code, and the prize  
ordonnances of particular countries, and the  
provisions made in public treaties, in later times,  
on the subject of prize ; that neither the laws  
of *Oleron*, nor the ordonnances of *Wisbuy*,  
nor the *Guidon*, nor the ordonnances of the  
*Hanse Towns*, contain any regulations respecting  
the general Law of Prize ; scarcely mention-  
ing the subject, except incidentally, amongst  
the accidents to which merchant vessels are li-  
able.

able. There are, in the Black Book of the Admiralty, a few, and but few articles respecting it. In the ordonnances of *Barcelona* of 1340, there are also a few articles, but relating rather to the division of interest between the captors, than to the general subject.



**FINIS.**

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